IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.1012 OF 2005

Abdul Rehman Mannan Khan and Ors. ..Appellants
Versus
Shashikala J. Pawar and Ors. ..Respondents

Mr.S.M.Kazi for appellants

CORAM : P.V.KAKADE, J.

DATE : 26TH SEPTEMBER, 2005.

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by Addl. District Judge, Khed, Ratnagiri dismissing the appeal and confirming the order passed by Civil Judge, Senior Division whereby the suit of the plaintiffs was decreed to the effect that the sale deed dated 21.10.1994 executed by defendant no.1 in favour of defendant nos.5 and 6 in respect of suit property to the extent of share of plaintiffs and defendant no.7 of their joint 2/3rd share is null and void. Further the defendant nos.5 and 6 were directed to hand over possession of 2/3rd share of the plaintiffs and defendant no.7 jointly to the plaintiffs by metes and bounds. The enquiry into the future mesne profit was directed and also granted

consequential reliefs.

2. I have heard the learned counsel for the appellants. Perused the record.

3. The plaintiffs filed the suit for declaration for declaring the sale deed executed by defendant no.1 in favour of defendant nos.5 and 6 as null and void as well as for permanent injunction and in the alternative for possession of the plainitff's' share. The subject matter i.e. suit property is land admeasuring 65.9 sq. meter and a structure standing therein bearing Municipal House No.126 on area admeasuring 50.54 sq. meter situated at village Harnani Tal. Dapoli in Survey No.161. The defendant contested the suit on the ground that the sale deed dated 21.10.1994 was legal and valid and as such the suit was sought to be dismissed.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiffs had proved that the suit property was ancestral property and plaintiff nos.1 to 4 were having 1/3rd share together therein. It was further held that the plaintiffs had proved that the plaintiff nos.5 and 6 and

defendant no.7 are having 1/3rd share together in the suit properties and as such the suit came to be decreed in above stated manner. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the sides and on the basis of available evidence confirmed the findings recorded by the trial court and dismissed the appeal. Hence the present appeal.

4. Initially it must be noted that there is absolutely no substantial question of law involved in this appeal. The learned counsel for the appellants sought to raise issue with regard to the aspect that when the suit was only for declaration, no partitions could be decreed and on that count alone he sought admission of this appeal. However, in my considered view, this argument advanced on behalf of the appellants is factually incorrect because as noted by both the courts below, it is apparent from the record that the plaintiffs' claim for declaration that the suit sale deed is null and void and in the alternative they claimed declaration as against their 2/3rd share. They further prayed for restraining the defendants from obstructing their possession and in the alternative they

claimed possession of their share in the property. Therefore, once the plaintiffs came with the case that they have 2/3rd share in the suit property and sought possession thereof, it was sufficient compliance for the purpose of seeking partition of the property and therefore, the submissions raised on behalf of the appellants are devoid of any merits. There is no other question of law involved in this appeal. Under the circumstances the appeal stands dismissed.

. Consequently Civil Application No.1534 of 2005 also stands dismissed.